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SPECIAL REPORT AND RECOMMENDATIONS MADE BY THE "D1" PANEL OF COMMISSIONERS CONCERNING 223 CLAIMS OF BOSNIA AND HERZEGOVINA FOR DEPARTURE FROM IRAQ OR KUWAIT (CATEGORY "A" CLAIMS)

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Introduction and background information to the 223 category "A" claims of Bosnia and Herzegovina

1. This special report contains the recommendations to the Governing Council of the United Nations Compensation Commission ("the Commission"), submitted pursuant to article 37(e) of the Provisional Rules for Claims Procedure ("the Rules") by the "D1" Panel of Commissioners ("the Panel"), being one of two Panels appointed to review individual claims for damages above USD 100,000. In view of the fact that the category "A" Panel of Commissioners ceased functioning in October 1996, the Governing Council instructed the Panel to review 223 category "A" claims of Bosnia and Herzegovina for departure from Iraq or Kuwait in the following special circumstances communicated to the Panel by the Commission's secretariat:

(a) On 27 January 1994, the secretariat received a letter from the Permanent Mission of the Republic of Bosnia and Herzegovina in Geneva, dated 25 January 1994, attaching a list of 1,535 employees of the GIK "HIDROGRADNJA" Civil Engineering and General Contracting Company ("HIDROGRADNJA") who had been working in Iraq on the Bekhme Dam Project and left Iraq immediately following Iraq's invasion of Kuwait. The Mission's letter explained that although HIDROGRADNJA's workforce in Iraq had exceeded 2,100 labourers, the Government of Bosnia and Herzegovina had been able by January 1994, despite war conditions in Bosnia and Herzegovina, to collect the necessary documents to register and file 580 category "A" claims with the Commission for such workers in accordance with the prescribed procedure.

(b) With regard to the remaining 1,535 employees of HIDROGRADNJA, the Mission explained that these workers lived in areas that were then (1994) in a war zone where much of the population had been "ethnically cleansed" and dispersed. The Mission suspected that many of the 1,535 workers on the list might have been killed or injured in the fighting or could still be at the battlefront. Alternatively, the Mission noted that some of the workers might have been incarcerated in concentration camps, were in hospitals or had become refugees in other European countries. Under such conditions, the Mission concluded that it might not be possible for the Government of Bosnia and Herzegovina to collect the necessary documents and details from the workers on the list to permit the normal filing of category "A" claims for them. The Mission therefore requested the Commission to accept its submission of the list of HIDROGRADNJA's workers attached to its letter of 25 January 1994 as constituting the filing of category "A" claims for the individuals in question, thereby making them eligible for compensation as a result of their departure from Iraq.

(c) Subsequent to sending the January 1994 letter, the Government of Bosnia and Herzegovina continued to file category "A" claims in the normal format with the Commission, which eventually totalled 2,587 in number. In the light of the large number of category "A" claims that were

filed by the Government of Bosnia and Herzegovina, it was the secretariat's understanding that formal claims had been submitted for all of the 1,535 HIDROGRADNJA employees on the original list. However, this understanding was corrected by HIDROGRADNJA in a 21 December 1998 letter that attached a revised list of 305 workers who had appeared on its original January 1994 list for whom it concluded that category "A" claims had not been filed with the Commission.

(d) In subsequent meetings between the secretariat and the Deputy Permanent Representative of the Mission of Bosnia and Herzegovina in Geneva, it was eventually determined that valid and timely category "A" claims had in fact been filed for 82 of the 305 HIDROGRADNJA employees on the company's list by the Government of the former Federal Republic of Yugoslavia (Serbia and Montenegro). As a result, out of the 305 HIDROGRADNJA employees who appeared on the December 1998 revised list, only 223 were confirmed as not having had category "A" claims submitted on their behalf with the Commission.

2. The Permanent Mission of Bosnia and Herzegovina in Geneva requested the secretariat to bring this issue to the attention of the Governing Council in order for a decision to be taken with regard to the eligibility of the 223 HIDROGRADNJA workers to receive compensation resulting from their category "A" claims. In response, the secretariat submitted to the Governing Council at its thirty-first session held in March 1999, the list of the 223 HIDROGRADNJA workers along with the Mission's proposal to have its January 1994 listing of workers serve as a formal filing for these claimants. After considering the information, the Governing Council requested the secretariat to prepare an information note on the subject for the Council's review at its thirty-second session.

3. In considering the secretariat's information note at its thirty-second session held from 22 to 24 June 1999, the Council took into account the fact that the 223 claims in question had originated in a "war zone". On the assurances received from the secretariat that the consideration of such claims would not have a disruptive effect on the processing of other claims before the Commission, the Council accepted the filing of the 223 claims of Bosnia and Herzegovina as "late claims". Noting the fact that the category "A" Panel of Commissioners had ceased functioning in October 1996, the Council determined that the 223 category "A" claims should be put before the "D1" Panel of Commissioners for review. The "D1" Panel was instructed to submit a special report and recommendations on the 223 claims to the Governing Council for its consideration at a later date.

I. THE "D1" PANEL'S REVIEW OF THE 223 CATEGORY "A" CLAIMS OF BOSNIA AND HERZEGOVINA

4. On 7 September 1999, the secretariat submitted to the "D1" Panel of Commissioners for its consideration a written report and relevant supporting documents concerning the 223 category "A" claims. Among the materials presented to the Panel were supporting documents submitted by HIDROGRADNJA to the Commission in March 1994 in support of its own claim in relation to the Bekhme Dam Project (UNCC claim number 4000224) which was eventually resolved by the "E3" Panel of Commissioners (construction and engineering claims) in its report and recommendations on the first instalment of "E3" claims (S/AC.26/1998/13), which was approved by the Governing Council in decision 58 (S/AC.26/Dec. 58 (1998)). Also presented to the "D1" Panel were compilations prepared by the Government of Bosnia and Herzegovina breaking down the 223 claims into three groupings based on identification and other evidentiary documentation.

5. The first of the three groupings covered 87 of the 223 category "A" claimants for whom the Government was able to provide photocopies of contemporaneous passports with exit stamps and border crossing entries demonstrating that the claimants had departed Iraq during the period of 2 August 1990 to 2 March 1991. For the second grouping, representing 38 of the 223 category "A" claimants, the Government was unable to provide photocopies of the contemporaneous passports used by the claimants during their work in Iraq on the Bekhme Dam Project. However, for this group, the authorities were able to furnish other identification documentation including death certificates and passport numbers as well as certifications and other legal documents provided by municipal governments and police departments in Bosnia and Herzegovina replacing passports that had been lost, destroyed or stolen during the armed conflict in Bosnia and Herzegovina. For the third group, representing 98 of the 223 category "A" claimants, the Government was unable to provide any identification information other than the names of the former HIDROGRADNJA workers.

6. In analyzing these documents, the "D1" Panel recalled that category "A" claims are among the "most urgent claims" for which the Governing Council's decision on the "Criteria for Expedited Processing of Urgent Claims" (S/AC.26/1991/1) ("decision 1") set forth "simple and expedited procedures" in order to provide "prompt compensation in full" or "substantial interim relief". The Panel has been aware of the evidentiary standard applicable to category "A" claims, as stated in decision 1 and more specifically in article 35(2)(a) of the Rules, which reads:

> "For the payment of fixed amounts in the case of departures, claimants are required to provide simple documentation of the fact and date of departure from Iraq or Kuwait. Documentation of the actual amount of loss will not be required."

7. Although the Government of Bosnia and Herzegovina was unable to provide supporting documentation for each of the 223 category "A" claims in question, to demonstrate on an individual basis that each former HIDROGRADNJA worker departed Iraq during the period between 2 August 1990 to 2 March 1991, the Panel was satisfied as to the claimants' entitlements by the thorough documentary evidence provided by HIDROGRADNJA for the portion of its own Bekhme Dam Project claim related to evacuation costs. In particular, the HIDROGRADNJA documentation included contemporaneous records prepared by the company in conjunction with the evacuation of its workforce that listed all of the 223 category "A" claimants by name and date of departure from Iraq (almost all of which took place in either August or September 1990). Based on its analysis of the HIDROGRADNJA company records, the Panel concluded that all 223 claimants had indeed departed from Iraq during the operative period and would therefore, in principle, be eligible to receive compensation for their departure losses.

8. Although the evidence reviewed in support of the claim showed that the category "A" claimants were eligible for compensation, the Panel was in the unique position of having no category "A" claim forms signed by the claimant himself or herself, which it could review. At a minimum, the Panel felt that the claimants should be required to establish their identity before the Commission and to certify that they have been in contact with the Government of Bosnia and Herzegovina and have authorized the Government to file category "A" claims on their behalf. The Panel therefore directed the secretariat to inform the Permanent Mission of Bosnia and Herzegovina that, prior to the Panel being able to recommend the payment of compensation for the 223 category "A" claimants, the Government authorities would have to produce identification documentation for each claimant and a signed authorization for the Government to submit a claim on the claimant's behalf.

II. THE RESPONSE OF THE GOVERNMENT OF BOSNIA AND HERZEGOVINA TO THE PANEL'S REQUIREMENTS

9. Having been informed in September 1999 of the Panel's requirement for identification documentation and for proof that the HIDROGRADNJA workers have authorized the Government to file category "A" claims on their behalf, the authorities in Bosnia and Herzegovina concluded that the most efficient way to present the necessary information to the Panel would be to create a standard claim form for all 223 claimants. The resulting claim form developed by the Government of Bosnia and Herzegovina includes entries providing the following information: the name, nationality and marital status of the claimant; the claimant's passport number, national card or certificate number; Iraqi residence permit number and national claim number; the date and place of birth of the claimant; the claimant's present residential and mailing addresses; the claimant's employer and address in Iraq; and the claimant's date of departure from Iraq and date of return to Bosnia and Herzegovina. On the bottom of each form is the following statement: "I certify that this is my claim form and that the information

in the form is true and correct." Under the statement is the typed name of the claimant and spaces for the claimant to sign and date the claim form as well as to fill in the location in which the claimant's signature was affixed.

10. Having developed a claim form to demonstrate that the claimants authorized the Government of Bosnia and Herzegovina to file category "A" claims on their behalf, the Government authorities began the task of locating each claimant to inform him/her of the necessity of appearing in person at the Ministry of Foreign Trade and Economic Relations in Sarajevo to fill out and sign a claim form, and to provide the necessary supporting identification documentation. The first submission from the Government of Bosnia and Herzegovina in response to the Panel's directive, consisting of signed claim forms and identification documentation for 147 of the 223 claimants, was received by the secretariat on 29 October 1999. On 7 January 2000, signed claim forms and supporting identification materials were received for 28 additional claimants, bringing the total of category "A" claimants meeting the Panel's criteria to 175.

11. With its transmittal note of 7 January 2000, the Permanent Mission of Bosnia and Herzegovina attached a letter from the Ministry of Foreign Trade and Economic Relations in Sarajevo in which the Ministry indicated that, among the 48 individuals for whom signed claim forms and identification documents had not yet been produced, it had reason to believe that a number had already been awarded compensation by the Commission and had received payments through the Governments of the Republic of Croatia or the Federal Republic of Yugoslavia. The Ministry requested the secretariat to investigate the situation and delete any resulting confirmed duplicate claims from its list of 223 category "A" claimants.

12. Pursuant to a review of the Commission's category "A" claim records, the secretariat found that 17 out of the 223 claimants had indeed filed duplicate claims through the Governments of the Republic of Croatia and the Federal Republic of Yugoslavia and had already received award payments for their claims. In response to the Ministry's request, the secretariat therefore deleted the 17 claims in question from the original list of 223 claimants leaving a revised total of 206 category "A" claimants. Of this total, no signed claim forms or identification documentation had been provided for 31 such claimants as of 7 January 2000.

13. The Permanent Mission of Bosnia and Herzegovina provided four additional signed claim forms with accompanying identification information on 17 January 2000. The same materials were submitted for two more claimants on 14 March 2000 and for two final claimants on 14 July 2000. As of that date, the secretariat had received signed claim forms with accompanying identification documentation from 183 out of the revised total of 206 claimants. The Ministry of Foreign Trade and Economic Relations has been unable to locate the remaining 23 claimants and therefore, has not

been able to provide the necessary signed claim forms and supporting identification documentation for them.

14. Prior to the signing of this report and recommendations, the secretariat ran a computerized matching programme on the 183 claims against the entire category "A" claims population for Bosnia and Herzegovina. As a result of this search, three claims were located among the 183, which had already been resolved and awarded compensation through the Government of Bosnia and Herzegovina in previous instalments. The secretariat has therefore removed the three claims in question from the list of 206 claimants leaving a revised final total of 203. As of the date of the signing of this report and recommendations, 180 out of the final revised total of 203 claimants have provided signed claim forms and identification information while 23 have not provided the required documents.

III. CONCLUSION

15. Pursuant to article 37(e) of the Rules, the Panel presents its recommendations regarding the 203 category "A" claims of Bosnia and Herzegovina. Having considered the results of the verification of the claim forms and their attachments, the Panel finds that all 203 claimants are eligible to receive compensation for their losses, and based on the fact that the Government of Bosnia and Herzegovina has complied with the Panel's requirement by providing the necessary signed claim forms and identification documentation for 180 out of 203 claimants and, bearing in mind the urgent humanitarian nature of such claims, the Panel recommends the payment of compensation for the 180 category "A" claimants in the total amount of USD 720,000.

16. The Panel understands that the Government of Bosnia and Herzegovina is continuing its efforts to locate the remaining 23 claimants and to obtain from them the signed claim forms and identification documents in compliance with the Panel's requirement. The Panel therefore recommends the award and payment of compensation in the amount of USD 4,000 each (totalling USD 92,000) to such of the 23 claimants from whom the Government of Bosnia and Herzegovina is able to receive and file with the Commission the required signed claim forms and identification documentation.

17. Confidential reports containing the breakdown of amounts to be paid to each indivdual claimant and a list of the duplicate and pending claims will be provided to the Government of Bosnia and Herzegovina.

18. On the basis of the consideration formulated in Part IV, section C, sub-section 3, of the first report of the category "A" Panel (S/AC.26/1994/2), the Panel recommends that interest should be paid on the awarded amounts in category "A" claims in accordance with the Governing Council's decision on "Awards of interest" (S/AC.26/1992/16) ("decision 16"). The Panel also adopts the view expressed by the category "A" Panel that the phrase "the date the loss occurred" in decision 16 should be

interpreted to be a single date for all category "A" claims and that the date of Iraq's invasion of Kuwait, 2 August 1990, should serve as the fixed date.

Geneva, 17 August 2000

(Signed) R.K.P Shankardass
Chairman

(Signed) H.M. Joko Smart
Commissioner

(Signed) M.C. Pryles
Commissioner